Supreme Court, U.S.
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NO.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 2002

NORMAN CHRISTMAN and
DIANE CHRISTMAN, husband and wife,
Petitioners,

v.

ROBERT SANDT, and CITY OF ALLENTOWN
Respondents.

Petition For Writ of Certiorari
To The United States Court of Appeals
For The Third Circuit

Richard J. Orloski
Attorney for Petitioners
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57pp

QUESTION PRESENTED FOR REVIEW

I. WHETHER OR NOT THIS HONORABLE COURT SHOULD ADDRESS THE FOURTH AMENDMENT REQUIREMENTS OF ADMINISTRATIVE HOUSING SEARCHES WHERE THE UNDISPUTED FACTS ARE THAT THE RESPONDENTS, OVER PETITIONERS' OBJECTIONS, EXECUTED A SEARCH OF PETITIONERS' PRIVATE PROPERTY WITH A WARRANT ONLY STATING REASON FOR PROBABLE CAUSE WAS "TENANT REFUSED TO LET HOUSING INSPECTOR ENTER TO CONDUCT A HOUSING INSPECTION"?

II. WHETHER OR OT FACTS NOT CONTAINED IN A HOUSING SEARCH WARRANT CAN BE SUBSEQUENTLY USED TO JUSTIFY A SEARCH WARRANT JUST BECAUSE IT IS AN ADMINISTRATIVE SEARCH WARRANT AND NOT A CRIMINAL SEARCH WARRANT?

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The Order of the United States Court of Appeals For the Third Circuit rendered November 4, 2002 is unrecorded and appears at Page App 1 of the Appendix herein.

The Order and Opinion of the United States District Court for the Eastern District of Pennsylvania rendered March 5, 2002 is unrecorded and appears at Page App 5 of the Appendix herein.

JURISDICTION STATEMENT

The final Order of the Court of Appeals for the Third Circuit was rendered November 4, 2002. This Petition For Writ of Certiorari is filed timely within ninety (90) days thereof. the jurisdiction of this Honorable Court rests upon 28 U.S.C. §1254(1) and Rule 10(a) and (c) of this Honorable Court in that a United States Court of Appeals has decided an important Federal question in a way that conflicts with relevant decision of this Honorable Court, namely, the probable cause requirements recited in *Camera v. Municipal Court,* 387 U.S. 523 (1967).

FEDERAL PROVISIONS INVOLVED

United States Constitution, Amendment 4 at Appendix Page App 28.

United States Constitution, Amendment 14 at Appendix page App 28.

Local Ordinance City of Allentown, Property Rehabilitation and Maintenance Code at Appendix page App 17.

STATEMENT OF CASE

A. Procedural History

On September 6, 2001, Petitioners filed this action against Respondents seeking damages arising from Respondents allegedly unlawful search of Petitioners' realty that Petitioners rented as their home. The District Court had jurisdiction over this matter pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343, 42 U.S.C. §1983 and the Fourth and Fourteenth Amendments to the United States Constitution. Discovery ensued. Respondents moved for summary judgment. Petitioners filed a

cross-motion for summary judgment. On March 5, 2001, the District Court granted Respondents' motion for summary judgment and denied Petitioners' cross-motion for summary judgment. The Court of Appeals denied Petitioners' timely appeal of the order granting Respondents' motion for summary judgment. Petitioners now seek review by this Honorable Court.

B. Statement of Facts

On November 5, 1998, the City of Allentown passed Ordinance 13708 which established a registration and certification program for rental units. On May 18, 1999, Ordinance 13775 was established by a voter initiative providing for the licensing and inspection of tenant occupied property only. There were two further additions to said Ordinance, Ordinance 13784 (October 6, 1999) and Ordinance 13842 (May 3, 2000).

Respondent, Robert Sandt, became a Code Enforcement Officer in about 1999 after the Ordinance was passed. He had no formal training about securing search warrants, and no one from the

Solicitor's Office ever gave the Code Enforcement Officers training in filling out a search warrant. At the time of his deposition, on October 29, 2001, Respondent Sandt had applied for a total of one (1) search warrant--which warrant was for the Christmans' resident, the subject of this action.

Respondent Sandt, was assigned to inspect all rental properties in the 14th Ward of Allentown by his supervisor, Eric Weiss. Respondent agreed that this assignment involved "...a reasonably big chunk of Allentown..."

The landlords of 246 E. Maple Street, Douglas Cooper and Frank J. Olivieri, were uncooperative in scheduling an inspection. Because the landlords were uncooperative, a criminal non-traffic citation was filed against the landlords before District Justice Carl Balliet. In lieu of proceeding with the criminal citation against the landlords, the landlords and the housing inspector appeared at Petitioner's residence for an inspection on March 9, 2001. The tenant, Robert Christman, vigorously objected to the inspection.

As Respondent, Sandt, clearly articulated, it was his job to get inside "every non-owner occupied" house in the 14th Ward.

Respondent knew that the tenants had two wheelchair-bound children suffering from muscular dystrophy. There was an opening in a retaining wall which the children in wheelchairs used to go through to access their school bus.

Respondent prepared an application for a search warrant. The search warrant claims that the Housing Inspector must have full access to the rental unit. Respondent Sandt ultimately agreed that such verbiage is not contained in the Ordinance, but that it was his sense from reading the Ordinance as a whole that led him to that conclusion. Respondent Sandt also testified that the only thing that he relied upon for probable cause was the refusal by the tenant to let him in.

Based upon this search warrant application, the Respondent Sandt obtained a warrant and went into Petitioners' residence on March 13, 2001 accompanied by another building inspector and two

uniformed officers. Using the warrant, Sandt and others invaded the premises causing considerable anxiety, distress and tears to the Christman family. The Christman's door was posted with a Notice of Violation on March 16, 2001. The Ordinance provides criminal penalties for failure to comply. Section 1759.99 of Ordinance, $500.00 fine per month UNLESS the landlord evicts the tenants from the property. On these facts, both parties sought summary judgment. Petitioners respectfully submit this Petition for Writ of Certiorari to reverse the order affirming the District Court Order which granted Respondents' motion for summary judgment and denied Petitioners' cross-motion for summary judgment.

REASONS FOR GRANTING WRIT

To state a claim under 42 U.S.C. §1983, Petitioners must demonstrate that Respondents, while acting under color of state law, intentionally deprived Petitioners of a federally protected constitutional right. 42 U.S.C §1983. The Christmans claim that Respondents whom no one

disputes are "state actors" under the pertinent statute, intentionally deprived Petitioners of their right to be free from search without probable cause. U.S.C.A. Constitutional Amendment 4. Although Respondents' search may have been constitutional if conducted pursuant to a valid warrant, Respondents procured an invalid warrant, and only recited that tenants must give full access to private property, upon demand by a housing inspector. That recitation for probable cause was patently erroneous, and this Court ought to address the requirements for probable cause in administrative search warrants. Thus, the Order granting Respondents' motion for summary judgment ought to be reversed.

1. The City of Allentown Ordinance contravenes the rationale offered by *Camera v. Municipal Court, supra*. As the Third Circuit Court of Appeals explained in *U.S. v. Butenko*, 494 F.2d 593, 635 (3d Cir. 1974):

> "Carefully circumscribed relaxation of the traditional fourth amendment probable

> fire, health and safety inspections, the Court sanctioned issuance of warrants without a showing of probable cause that a particular dwelling contained a violation, but rather only upon satisfaction of reasonable legislative and administrative standards for conducting an inspection of the area in which the dwelling is located. The Court observed that such inspections are neither personal in nature nor aimed at discovery of evidence of a crime, and thus they involve a relatively limited invasion of privacy. *Camera v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967). *See v. City of Seattle*, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943 (1967). 494 F.2d at 635.

The remedy offered by the Allentown Ordinance is both criminal and personal:

> "B. PENALTIES
>
> 1. Revocation of Residential Rental Registration or Residential Rental License: A fine of not less than five hundred dollars ($500.00) per residential rental unit for each month the violation exists. Each month the violation exists constitutes a separate

violation. A fine shall not be sought for any period during which the residential rental unit is vacant and the owner, operator, responsible agent or manager is taking appropriate action to correct the violations.

2. Failure to register, or Failure To Seek a Residential Rental License (for newly constructed, newly created or substantially rehabilitated residential rental units. The owner, responsible agent or manager shall be sent a Thirty (30) day Notice of Violation, warning them of their failure to comply with the terms of this Article. If they do not comply at the end of thirty (30) days, there shall be a fine of not less than five hundred dollars per residential rental unit for each month the violation exists. Each month the violation exists constitutes a separate violation.

C. Whoever violates any provision of this Code or any Section of this Code shall upon a first offense be fined not more than One Thousand ($1,000.00) Dollars or imprisoned not more than ninety (90) days, or both.

D. If, after any conviction for violation of this Code or any lawful order issued

> pursuant thereto, such person continues violation, then such person shall be liable for further prosecution, conviction, and punishment without any necessity of the Public Officer to issue a new a new notice of violation or order, and until such violation has been corrected."

In other words, the City of Allentown has criminalized the inspection process so the inspector is there for the express purpose of gathering evidence of a crime. If the landlord does not make the repairs mandated by the inspection, then the landlord faces two options: a) fine and/or imprisonment; OR b) evict the tenant to avoid fine or imprisonment.

Is it any wonder that a tenant with children in wheelchairs was less than cooperative with the housing inspector? If the inspector found violations in the leasehold estate, then the Respondents gave the landlord the option of repair, fine and/or imprisonment, or evicting the tenants.

The remedy elected by the City of Allentown takes it out of the procedure outlined in *Camera v. Municipal Court, supra,*. The inspection is aimed at

discovering evidence of a crime. The remedy is very personal to the tenant: eviction by the landlord to stop the penalty of a fine and/or imprisonment. Hence, even assuming, *arguendo*, that the Respondents, Sandt and City of Allentown, complied with the prerequisites of an inspection consistent with *Camera v. Municipal Court*, the penalties imposed upon the tenant takes the Allentown Ordinance outside the ambit of *Camera v. Municipal Court, supra*. The search was clearly illegal and in violation of Petitioners' right to be free from unreasonable searches and seizures guaranteed by the Fourth Amendment to the United States Constitution.

2. The District Court erred as a matter of law in granting Respondents' summary judgment motion.

The Christmans do not seek to eliminate area searches as a means of seeking compliance with code standards and reasonable goals of code enforcement.

Unlike the Plaintiffs in *Camera*, the Christmans do not suggest that warrants should issue only when the inspector possesses probable

cause to believe that a particular dwelling contains violations of the minimum standard prescribed by the code being enforce.

The *Camera* court held that administrative searches by municipal health and safety inspectors constitute significant intrusions upon interests protected by the Fourth Amendment. *Camera, supra.* Such searches, when conducted without warrant procedure, lack traditional safeguards with the Fourth Amendment guarantee to individuals. *Id.* The focus, therefore, should have been: a) what safeguards were required to protect Petitioners' Fourth Amendment rights; and b) did Respondents comply with those safeguards? The District Court failed to consider these critical questions, and the Circuit Court improperly affirmed.

Instead, the District Court cites *Camera* for the correct legal proposition that area searches are generally reasonable. However, the District Court then leaps to the conclusion that probable cause existed to issue the search warrant. Opinion of the United States District Court for Eastern District of

Pennsylvania dated 3/5/01. The District Court's analysis is flawed and winks at the blatant insufficiency of the Sandt Warrant because of after-the-fact rationalizations not contained on the warrant application. Hence, the Order granting Respondents' motion for summary judgment ought to be reversed.

II. WHETHER OR OT FACTS NOT CONTAINED IN A HOUSING SEARCH WARRANT CAN BE SUBSEQUENTLY USED TO JUSTIFY A SEARCH WARRANT JUST BECAUSE IT IS AN ADMINISTRATIVE SEARCH WARRANT AND NOT A CRIMINAL SEARCH WARRANT?

1. The District Court properly adopted the ' contention that *Camera* explains the constitutionally-mandated standards for obtaining a search warrant by housing inspectors. Here, this search as a housing inspector search must meet those standards. The District Court erroneously skipped a crucial step: what does the Sandt warrant recite as probable cause, and does the Sandt warrant, as prepared, meet the *Camera v. Municipal Court, supra* requirements? The Supreme Court of

the United States has explicitly held that the information inside the warrant controls the validity of the warrant. *Maryland v. Garrison,* 480 U.S. 79, 85, 94 L.Ed.2d 72, 107 S.Ct. 1013, 1017 (1987).

As articulated time after time, information known to the officers--but never disclosed to the issuing magistrate in the search warrant application--cannot be used to justify the validity of the warrant where that information was not formally brought to the attention of the issuing magistrate. *Aquilar v. Texas,* 378 U.S. 108, 12 L.Ed.2d 723, 84 S.Ct. 1509 (1964). A search warrant can never be validated by information known to the officer but not formally described in the affidavit of probable cause. *U.S. v. Lockett,* 674 F.2d 843 (11th Cir. 1982). See, also, *U.S. v. Babick,* 347 F.Supp. 157 (DC. Nev. 1972) affirmed 477 F.2d (9th Cir. 1973), cert denied 414 U.S. 828, 38 L.Ed.2d 63, 94 S.Ct. 54 (1973). Again, see *U.S. v. Klein,* 565 F.2d 183 (1st Cir. 1977) for the proposition that the validity of a search warrant must be appraised by the facts revealed to the magistrate, and affidavit cannot be rehabilitated by

after-the-fact information which may have been known to the agents but not directed to the court prior to obtaining the search warrant. See, also, *U.S. v. Morris*, 491 F.Supp. 222 (DC Ga. 1980), affirmed 647 F.2d 568 (11th Cir. 1981). Compare, *Magda v. Benson*, 536 F.2d 111 (6th Cir. 1976). It is the formal contents of the affidavit in support of probable cause that controls. *Gardner v. State*, __ De. Super ___, 561 A.2d 404 (1989), cert denied, 494 U.S. 1067, 108 L.Ed.2d 786, 110 S.Ct. 1785 (1989); *State v. DeSmidt*, 155 Wis.2d 119, 454 NW.2d 780 (1990), cert dismissed, 498 U.S. 1043, 112 L.Ed.2d 709, 111 S.Ct. 721 (1991).

Here, the search warrant is deficient. The search warrant merely recited that the Housing Officer has been denied access, and he wants in. That is not probable cause. The United States Supreme Court shunned such a "rubber stamp" approach to warrants because it leaves the tenant subject to the discretion of an official in the field. *Camera* 387 U.S. at 532-33. The search conducted pursuant to the invalid warrant is a constitutional

violation. Hence, the Order granting Respondents' motion for summary judgment ought to be reversed.

2. The warrant failed to set forth sufficient information to constitute a valid warrant. See. *In re: Northwest Airlines, Inc.* 587 F.2d 12 (7th Cir. 1978) where the Court explicitly looked at the affidavit of probable cause to determine whether or not the affidavit set forth sufficient information to determine whether or not there was a reasonable legislative or administrative neutral program which authorized the search. Absent the specifics of a neutral area plan articulated in the search warrant, the warrant was invalid. Compare *Michigan v. Tyler*, 436, 98 S.Ct. 1942 (1978), which first articulated the need for legislative or administrative guidelines specifying purposes, frequency, scope and manner of conducting administrative searches under warrant.

3. Here, the search warrant reveals no "neutral area plan." The testimony of Respondent Sandt, reveals no "neutral area plan." The search warrant claims that the Housing Inspector must have full access to the rental unit. Respondent

Sandt ultimately agreed that such verbiage is not contained in the Ordinance, but that it was his sense from reading the Ordinance as a whole that led him to that conclusion. Respondent Sandt admitted that the only thing that he relied upon for probable cause was the refusal by the tenants to let him in.

4. The warrant in this case failed to demonstrate the informed and deliberate determination of a magistrate versus the hurried action of an official. The essential purpose of the Fourth Amendment proscription is to impose a standard of reasonableness upon government officials' exercise of discretion to safeguard privacy and security of individuals against arbitrary invasion. U.S.C.A. Const. Amend 4; *Marshall v. Barlows, Inc.*, 436 U.S. 307, 312, 98 S.Ct. 1816, 1820 (1978) quoting *Camera, infra*. Individuals living in rental units do not lose all reasonable expectation of privacy simply because their home is a rental unit subject to government regulations. U.S.C.A. Const. Amends. 4, 14. Safeguards must be relied upon to assure that the individuals' reasonable expectation of

privacy is not subject to the discretion of the officer in the field. *Camera* 387 U.S. at 532, 87 S.Ct. at 1733. Search of private property without proper consent generally is unreasonable unless it has been authorized by a valid search warrant. U.S.C.A. Cons. Amend. 4.

Here, the safeguard of Petitioners' constitutional right should have been that a search was conducted pursuant to a valid search warrant. *Camera, supra*. Respondents failed to obtain a valid search warrant. Hence, the order granting Respondents' motion for summary judgment ought to be reversed.

The *Camera* court upheld the reasonableness of area inspection searches for the purpose of the Fourth Amendment. However, "probable cause" to issue a warrant must exist.

5. Where Respondents' affidavit failed to set forth sufficient information for the magistrate to determine whether there was a reasonable legislative or administrative program to perform the search, the search warrant is invalid. *Northwest*

Airlines, supra 587 F.2d at 15. The purpose of the warrant procedure is to guarantee that a decision to search private property is justified by a reasonable governmental interest. *Camera* 387 U.S. at 539.

An invalid warrant cannot be justified by the results of the search. If the warrant is invalid, then the search constituted a constitutional violation. *Maryland v. Garrison,* 480 U.S. 79, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987).

Owners of residential and even commercial property have a constitutional right to deny inspectors access to their property. *Camera supra* and *See v. City of Seattle,* 387 U.S. 591 (1967). The United States Supreme Court made clear a long time ago that both residential and commercial owners may insist that any search be conducted only by a warrant. *Id.* here, Respondent, Sandt, concedes that he started this search of 246 E. Maple Street by filing a criminal non-traffic citation against the landlord for not cooperating with the inspection. *Camera* and *See* do not stand for the proposition that a housing inspector is entitled to a search warrant

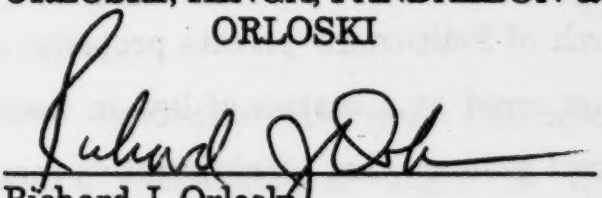
just because he is a housing inspector. Instead, the housing inspector must be acting pursuant to a "neutral" area plan, and the plan must be lawfully promulgated by ordinance or regulation. *Martin v. International Matex Tank Terminals-Bayonne,* 9128 F.2d 614 (3d Cir. 1991).

Respondents failed to act pursuant to a "neutral area plan" which may have legitimized their search of Petitioners' private property. The District Court erred as a matter of law in leaping from the correct premise that administrative searches may be conducted on a reduced showing of probable cause to...if a housing inspector desires a warrant for a search of a private home, the officer may do so without obtaining a valid warrant. hence, the order granting Respondents' motion for summary judgment ought to be reversed.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Honorable Court grant this Petition for Writ of Certiorari to review the judgment of the Third Circuit Court of Appeals which affirmed the grant of Respondents' motion for summary judgment.

ORLOSKI, HINGA, PANDALEON & ORLOSKI



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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-1761

NORMAN CHRISTMAN AND DIANE CHRISTMAN
Appellants
v.
ROBERT SANDT; CITY OF ALLENTOWN

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(D.C. Civ. No. 01-cv-04522)
District Judge: Honorable Robert F. Kelly

Submitted Under Third Circuit L.A.R. 34.1(a)
November 1, 2002
Before, NYGAARD and WEIS, Circuit Judges
and IRENAS

JUDGMENT

This cause came to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted on November 1, 2002.

On consideration whereof, it is here now ORDERED AND ADJUDGED by this Court that the

Order of the said District Court entered March 5, 2002 be, and the same is hereby affirmed. Costs taxed against appellants.

All of the above is in accordance with the Opinion of this Court.

ATTEST:

Kathleen Brown
Acting Clerk

Dated: November 4, 2002

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-1761

NORMAN CHRISTMAN AND DIANE CHRISTMAN
Appellants
v.
ROBERT SANDT; CITY OF ALLENTOWN

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(D.C. Civ. No. 01-cv-04522)
District Judge: Honorable Robert F. Kelly

App 3
Submitted Under Third Circuit L.A.R. 34.1(a)
November 1, 2002
Before, NYGAARD and WEIS, Circuit Judges
and IRENAS*

(Opinion filed November 4, 2002)

OPINION

*The Honorable Joseph E. Irenas, United States District Judge for the District of New Jersey sitting by designation.

WEIS, Circuit Judge.

In this case, the District Court granted summary judgment for the defendants concluding that they properly conducted an administrative search of plaintiffs' home. Because the parties are familiar with the details of this case and the judgment will be non-precedential, it is not necessary to review the factual background at length.

The defendant, City of Allentown, enacted an ordinance providing for a systematic inspection of

residential units to insure that they comply with applicable local ordinances, state laws and regulations. When plaintiffs refused defendants entry into their rental unit, the city inspector secured a warrant and entered the house in the presence of uniformed police. Once inside, the inspection revealed a number of items that required repair.

The plaintiffs contend that the search warrant was deficient on its face, and that their Fourth Amendment rights were violated. We have reviewed the submissions of the parties and agree with the District Court's conclusions that the ordinance is reasonable, that the warrant was properly issued, and that the defendants' (sic) constitutional rights were not violated. See Camera v. Municipal Curt of the City and County San Francisco, 387 U.S. 523 (1967).

Accordingly, the judgment of the District Court will be affirmed. By the Court,

/s/ Joseph F. Weis, Jr.
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

NORMAN CHRISTMAN, et al.	:	CIVIL ACTION
	:	
v.	:	NO. 01-4522
ROBERT SANDT and CITY OF ALLENTOWN,	:	

ORDER

Before the Honorable Robert F. Kelly

AND NOW, this 5th day of March, 2002, in accordance with the Court's Memorandum and Order filed on this date, IT IS ORDERED that Judgment be and the same is hereby entered in favor of the defendants and against the plaintiffs.

BY THE COURT

ATTEST: Thomas Garrity
Deputy Clerk

ENTERED
MAR 06 2002
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

NORMAN CHRISTMAN, et al.	:	CIVIL ACTION
	:	
v.	:	NO. 01-4522
ROBERT SANDT and CITY OF ALLENTOWN,	:	

MEMORANDUM

ROBERT F. KELLY, SR. J. MARCH 5, 2002

Presently before this Court is the motion of Defendants, City of Allentown and Robert Sandt ("Defendants"), for Summary Judgment as well as the Cross-Motion for Summary Judgment filed by Plaintiffs, Norman Christman and Diane Christman ("Plaintiffs"). For the following reasons, Defendants' Motion is granted and Plaintiffs' Motion is denied.

I. BACKGROUND

This case arises out of the City of Allentown's administration of its Property Rehabilitation Code, specifically, Article 1759, which sets forth licensing requirements for all residential rental units. This

section of the ordinance requires that each owner, operator, responsible agent or manager must keep and maintain all residential units in compliance with all applicable state laws and regulations and local ordinances and to keep such properties in a good and safe condition. Article 1759 provides for a phased-in systematic inspection program for all rental properties requiring that a minimum of sixty days notice must be given for all initial inspections and allowing for a full inspection of each residential unit no more frequently than once within a five year period. See ALLENTOWN, PA., PROPERTY REHABILITATION AND MAINTENANCE CODE, Art. 1759.06.

In the case *sub judice,* the Plaintiffs are the tenants of a non-owner occupied rental unit located at 246 East Maple Street which is in Allentown's Fourteenth Ward. In compliance with Article 1759.06, a letter was sent to the owners of Plaintiffs' residence giving a sixty-day notice of the inspection. On March 9, 2001, Defendant Robert Sandt ("Sandt"), who is a Code Enforcement Officer for the

City of Allentown responsible for inspecting all rental properties located within the Fourteenth Ward of Allentown, arrived at Plaintiffs' residence in order to conduct the inspection. Plaintiffs refused to allow Sandt to inspect the unit without a search warrant. On March 13, 2001, Sandt procured a search warrant from the Magistrate and peacefully conducted the inspection of 246 East Maple Street along with another inspector and two uniformed police officers. Plaintiffs' only contention is that the search warrant obtained by Sandt was deficient on its face and, therefore, their Fourth Amendment rights were violated. For the following reasons, we find that Defendants have not violated the United States Constitution, and shall enter summary judgment in their favor on both counts of Plaintiffs' Complaint.

II. STANDARD

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter

of law." Fed R.Civ.P. 56 (c). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonably jury could find for the non-moving party. *Anderson v. Liberty Lobby, Inc.,* 477 US 242, 249 (1986). A factual dispute is material only if it might affect the outcome of the suit under governing law. *Id.* at 248. To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." Fed. R.Civ.P. 56(e). If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. *Celotex,* 477 U.S. at 322; *Wisniewski v. Johns-Manville Corp.* 812 F.2d 81, 83 (3d Cir. 1987).

III. DISCUSSION

Based upon the information contained in the warrant, Plaintiffs contend that probable cause did not exist to issue the warrant and, therefore, challenge the sufficiency of the warrant which allowed Sandt to enter their residence. Defendants contend that the search warrant was proper and consistent with the tenets of the Fourth Amendment as it was attained for the purpose of an area inspection pursuant to Article 1759 of the City of Allentown's Property Rehabilitation Code, which was enacted in an effort to alleviate substandard housing and urban blight. (Defs" Mem of Law 8).

The Supreme Court set forth the principles governing area code-enforcement inspections in *Camera v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967). The *Camera* Court concluded that "in determining whether a particular inspection is reasonable--and thus in determining whether there is probable cause to issue a warrant for that inspection--the need for the

inspection must be weighed in terms of these reasonable goals of code enforcement." *Id.* at 538. Therefore, "reasonableness [of the inspection] is the ultimate standard" *Id.* at 536.

A. Reasonableness of the Ordinance

Article 1759 of the Codified Ordinances of the City of Allentown, which addresses the licensing of residential rental units, was passed by certified voter initiative on May 18, 1999. The purpose of the ordinance, in addition to protecting and promoting the public health, safety and welfare of its citizens, is to establish rights and obligations of owners and occupants relating to residential rental units in Allentown and to encourage owners and occupants to maintain and improve the quality of rental housing within the community. ALLENTOWN, PA., PROPERTY REHABILITATION AND MAINTENANCE CODE, Art. 1759.01. Accordingly, the ordinance provides for a systemic inspection program, registration and licensing of residential rental units and penalties. Article 1759 was adopted based upon the City of Allentown's following findings: (1) a general decline

in the physical condition of residential rental units; (2) a greater incidence of problems with the maintenance and upkeep of residential properties which are not owner occupied as compared to those that are owner occupied; (3) a greater number of disturbances at residential rental units than all other properties combined; and (4) violations of the various codes are generally less severe at owner-occupied units as compared to residential units. *Id.* The inspections are to occur once within a five year period and a minimum of sixty days notice is given for all initial inspections. ALLENTOWN, PA., PROPERTY REHABILITATION AND MAINTENANCE CODE, Art. 1759.06.

The City of Allentown's above-stated reasons for the need of the residential inspection program are consistent with purpose of such inspections as enunciated by the Court in *Camera*. In *Camera*, the Court noted the following factors in support of area code-enforcement inspection programs; a long history of judicial and public acceptance; the public

interest demands that all dangerous conditions be prevented or abated; and inspection programs involve a relatively limited invasion of the urban citizen's privacy since they are neither personal in nature nor aimed at the discovery of evidence of a crime. *Camera* at 537. For all the foregoing reasons, this Court finds that the residential rental inspection program set forth in Article 1759 is reasonable and thus the search of Plaintiffs' residence was a proper search within purview of the Fourth Amendments prohibition against unreasonable searches and seizures. See also *Smith v. Borough of Glenolden*, No. 94-3819, 1994 WL 672618 (E.D. Pa. Nov. 30, 1994) (finding the municipal code requiring annual inspections of all private residential apartments reasonable and not a violation of the Fourth Amendment).

B. Probable Cause To issue a Warrant

Probable cause in the gamut of an area inspection is based upon an appraisal of conditions in an area as a whole, not upon knowledge of

conditions in each particular building; *Camera* at 536. The search warrant in this case was issued after the Plaintiffs refused to allow Sandt to conduct the area inspection. The search warrant identifies the area to be searched as "246 East Maple Street, single family dwelling, basement, 1st floor, 2nd Floor and 3rd Floor" as well as identifies the type of search as an "inspection of interior premises according to the Residential Licensing Program 1759.06 (A)". The warrant further states that, pursuant to 1759.06(A), the city inspector must have full access to the rental unit and that probable cause is based upon the tenants' refusal to allow the inspector to conduct the inspection at the scheduled time. Although Plaintiffs challenge the validity of the search warrant which allowed Sandt access to inspect the rental unit, Plaintiffs argument is flawed as it rests wholly on case law regarding probable cause in the criminal context. "Where considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those

that would justify such an inference where a criminal investigation has been undertaken." *Camera* at 538. Accordingly, "the test of probable cause required by the Fourth Amendment can take into account the nature of the search that is being sought." *Id.* (internal citations omitted). As stated previously, probable cause in the context of an area inspection is based upon the reasonableness of the relevant ordinance. This Court already determined that Article 1759 is reasonable and thus there was probable cause to issue the warrant. Therefore, probable cause to issue the warrant for inspection of Plaintiffs' residence existed and the search conducted at Plaintiffs' residence was proper within the purview of the Fourth Amendment.

IV CONCLUSION

Based upon the foregoing, probable cause existed for the issuance of the search warrant, and the search conducted at Plaintiffs' residence was proper.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

NORMAN CHRISTMAN, et al.	:	CIVIL ACTION
	:	
v.	:	NO. 01-4522
ROBERT SANDT and CITY OF ALLENTOWN,	:	

ORDER

AND NOW, this 5th day of March, 2002 upon consideration of the Motion filed by Defendants, City of Allentown and Robert Sandt, for Summary Judgment as well as the Cross-Motion for Summary Judgment filed by Plaintiffs, Norman Christman and Diane Christman, and any Responses thereto, it is hereby ORDERED that:

1. Plaintiffs' Cross-Motion for Summary Judgment is DENIED; AND

2. Defendants' Motion For Summary judgment is GRANTED, the Complaint is DISMISSED and the Clerk of Court is hereby directed to mark this case as CLOSED.

BY THE COURT

ROBERT F. KELLY, S.J.

App 17

THE CITY OF ALLENTOWN

PROPERTY REHABILITATION AND MAINTENANCE CODE

Articles 1741-1759 of the Codified Ordinances

Complied to January 15, 2001 by the City Clerk's Office

ARTICLE 1759 LICENSING RESIDENTIAL RENTAL UNITS

(Passed by Certified Voter initiative on May 18, 1999, Ordinance No. 13775)

1759.05 RESIDENTIAL RENTAL REGISTRATION

A. **Registration Required For Rental Units** By March 31, 2000, the owner, operator, responsible agent or manager of each residential rental unit shall apply for a Residential Rental Registration with the Department of Community Development. By March 31, of each calendar year after 2000, the owner, operator, responsible agent or

manager of each residential rental unit shall continue to apply for a Residential Rental Registration until the unit is licensed, at which time he/she shall be issued a Residential Rental License. For each calendar year thereafter, the owner, operator, responsible agent or manager of the residential rental unit shall continue to apply for a Residential Rental License.

B. **Issuance of Residential Rental Registration.** A Residential Rental Registration shall be issued if the owner or operator of the residential rental unit provides the name of a responsible agent (if applicable), pays the registration fee, submits a complete and accurate occupant listing by residential rental unit by April 15 of each year and is current on water and sewer fees for the residential rental unit, as defined in Article 945, Sewer Rates of the Codified Ordinances of the City of Allentown, respectively. This registration does not warrant the proper zoning, habitability, safety or condition of the residential rent unit in any way.

1759.06
RESIDENTIAL RENTAL LICENSE

A. Residential Rental License Required for Residential Rental Units: A Residential Rental License shall be required for each residential rental unit unless the residential rental unit has not been inspected or has outstanding violations of the applicable codes and operates under a Residential Rental Registration, or is exempt as defined above.

Prior to initial occupancy of newly constructed residential rental units, newly created residential rental units, or substantially rehabilitated residential rental units (as documented by a certificate of occupancy), the owner, operator, responsible agent or manager of each residential rental unit shall register with and make written application to the Department of Community Development for a Residential Rental License as herein provided. Such units will be exempt from further inspection, unless a complaint of violation has occurred or a Public Officer has probable cause

to believe that a violation has occurred as provided in Section 1741.08 for a period of at least five (5) year and will be inspected again when the area in which they are located is next scheduled for inspection after the five (5) year exemption has expired.

For licensing purposes, the Department of Community Development shall fully inspect each residential rental unit no more frequently than once within a five (5) year period unless a complaint of violation has occurred or a Public Office has probable cause to believe that a violation is occurring as provided in Section 1741.08. Unless sooner revoked for cause, the Residential Rental License shall remain in effect until such time as the next regularly scheduled inspection occurs, assuming the annual license fee is paid.

Initial inspections will occur in accordance with a phased-in systematic inspection program to be prepared and made available upon request by the Department of Community Development. A minimum sixty (60) days written notice shall be

given for all initial inspections. The penalty for not allowing an inspection shall be revocation of the Residential Rental Registration or the Residential Rental License.

1759.99 FEES/PENALTIES SECTION

A. FEES

1. Registration:

The fee for a Residential Rental Registration shall be fifteen dollars ($15.00) per residential rental unit per year due and payable by March 31 of each year until a Residential Rental License is obtained.

After March 31 of each year, this fee shall be one hundred dollars ($100.00) per residential rental unit per year.

2. Licensure:

The fee for a Residential Rental License shall be twenty dollars ($20.00) per residential rental unit per year due and payable by March 31 of each year.

After March 31 of each year, this fee shall be one hundred dollars ($100.00) per residential rental unit per year.

The fee shall be reduced to ten dollars ($10.00) per year for each residential rental unit meeting the following criteria:

no disruptive conduct complaints filed, and upheld, during the previous calendar year; all taxes and fees paid by December 31 of the preceding year; must pas inspection after the first reinspection, both interior and exterior of the property must be in compliance with all codes (there will be an allowance for exterior repairs for the time of the year); the previous year's annual license fee was paid by March 31 of that year; corrected any code violations cited between the five (5) year full inspections within thirty (30) days; named responsible agent, if property is owned by someone residing outside Lehigh County and not meeting the exemption criteria; maintained records demonstrating that all occupants have obtained a moving permit from the Department of Community Development, whenever appropriate; and submitted a complete and accurate occupant listing by residential rental unit.

3. Reinspections:

The fee for the third reinspection and all subsequent reinspections per residential rental unit shall be fifty dollars ($50.00) per reinspection.

4. Reinstatement:

The fee to reinstate a revoked Residential Rental Registration or a Residential Rental License shall be twenty dollars ($20.00) per residential rental unit.

5. Transfer:

The fee to transfer a Residential Rental Registration or a Residential Rental License shall be twenty dollars ($20.00) if paid within sixty (60) days of sale or transfer of title and one hundred dollars $100.00) if paid after sixty (60) days of sale or transfer of title.

B. PENALTIES

1. Revocation of Residential Rental Registration or Residential Rental License:

A fine of not less than five hundred dollars ($500.00) per residential rental unit for each month the violation exists. Each month the violation exists

constitutes a separate violation. A fine shall not be sought for any period during which the residential rental unit is vacant and the owner, operator, responsible agent or manager is taking appropriate action to correct the violations.

2. Failure to Register, or Failure to Seek a Residential Rental License (for newly constructed, newly created or substantially rehabilitated residential rental units):

The owner, responsible agent or manager shall be sent a Thirty (30) Day Notice of Violation, warning them of their failure to comply with the terms of this Article. If they do not comply at the end of thirty (30) days, there shall be a fine of not less than five hundred dollars ($500.00) per residential rental unit for each month the violation exists. Each month the violation exists constitutes a separate violation.

C. Whoever violates any provision of this Code or any Section of this Code shall upon a first offense be fined not more than One Thousand

($1,000.00) dollars or imprisoned not more than ninety (90) days, or both.

D. If, after any conviction for violation of this Code or any lawful order issued pursuant thereto, such person continues violation, then such person shall be liable for further prosecution, conviction, and punishment without any necessity of the Public Officer to issue a new notice of violation or order, and until such violation has been corrected.

E. In addition to prosecution of persons violating this Code, the Public Officer, or the Bureau of Law or any duly authorized agent of the City may take such civil or equitable remedies in any court of record of the Commonwealth of Pennsylvania, against any person or property, real or person, to effect the provisions of this Code.

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF LEHIGH)

ADMINISTRATIVE
SEARCH WARRANT AND AFFIDAVIT

Warrant Control No. K16668

Date of Application Mar. 12, 2001

Robert Sandt Housing Inspector, Allentown City Hall 610.437.7604 being duly sworn (or affirmed) before me according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at particular premises or in the possession of particular persons as described below.

Inspection of interior premises according to the Residential Licensing Program 1759.06(A)

(Description of Premises) 246 East Maple Street - single family dwelling, basement, 1st Fl, 2nd Fl. & 3rd Fl

(Name of Owner, Occupant or Possessor of said premises to be searched)

Douglas Cooper & Frank Oliverieri

(Violation) 1759.06(A) City Inspector must have full access to rental unit.

(Date of Violation) Mar. 9, 2001

(Probable Cause Belief is Based on the following facts and circumstances)

Inspection for property was scheduled for 09-MAR-01 at 1:30 PM. Tenant refused to let Housing Inspector enter to conduct a housing inspection.

/s/Robert Sandt, Code Enforcement & Rehabilitation, 425 Hamilton Street, Rm. #20 City of Allentown.

Sworn to and subscribed before me this 12th day of Mar. 2001, 825 N. Fenwick St., Allentown, PA 18109 /s/ Carl Balliet Mag. Dist. No.31-1-01

To law enforcement officer: Whereas, facts have been sworn to or affirmed before me by written affidavit attached hereto from which I have found probable cause, I do authorize you to search the premises or person (described on the reverse side) and to seize, secure, inventory, and make a return according to the Pennsylvania Rules of Criminal Procedure, the items described on the reverse side.

This Warrant should be served as soon as practicable but in no event later than 2:00 PM Mar. 14, 2001. Issued under my hand this 12th day of Mar. 2001 at 2:00 PM

/s/Carl Balliet, District Justice.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Ratified December, 1791).

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(2)

Supreme Court, U.S.
FILED
FEB 25 2003
OFFICE OF THE CLERK

No. 02-1132

In The

Supreme Court of the United States

NORMAN CHRISTMAN and DIANE CHRISTMAN, H/W,

Petitioners,

vs.

ROBERT SANDT and CITY OF ALLENTOWN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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17pp

QUESTION PRESENTED FOR REVIEW

Does Petitioners' Petition for a Writ of Certiorari fail to set forth appropriate grounds for review by this Honorable Court, as Petitioner has failed to cite any conflicts in the Circuit Court's Decision with the existing law in other Circuits or in the Commonwealth of Pennsylvania?

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Frank v. State of Maryland, 359 U.S. 360, 79 S.Ct. 804, 3 L.Ed.2d 877 (1959) 3, 4, 5

Smith v. The Borough of Glenolden of Delaware County, Pennsylvania, 1994 WL 672618 (E.D. Pa.) 8, 10

STATEMENT OF THE CASE

This case arises out of the City of Allentown's administration of its Property Rehabilitation Code, specifically Article 1759, which sets forth licensing requirements for all residential rental units. (R.R.17a). This section of the Ordinance requires that each owner, operator, responsible agent or manager must keep and maintain all residential units in compliance with all applicable state laws and regulations and local ordinances and to keep such properties in a good and safe condition. Article 1759 provides for a phased-in systematic inspection program for all rental properties requiring that a maximum of 60 days notice must be given for all initial inspections and allowing for a full inspection of each residential unit no more frequently than once within a five-year period. (R.R.17a).

The plaintiff-appellants are tenants of a non-owner occupied rental unit located at 246 East Maple Street, which is in Allentown's Fourteenth Ward. In compliance with Article 1759-06, a letter was sent to the owners of the residence giving a 60-day notice of inspection. (R.R.51a). On March 9, 2001, the defendant Robert Sandt, a code enforcement officer for the City of Allentown responsible for inspecting all rental properties within the Fourteenth Ward of Allentown, arrived at the residence to conduct an inspection. (R.R.40a). Sandt initially conducted an inspection of the exterior of the property. (R.R.41a). Sandt then knocked on the front door of the property and plaintiff-appellant Norman Christman appeared at the door. (R.R.31a). Christman was extremely hostile and Sandt wanted to avoid a confrontation. (R.R.32a). Sandt explained to Christman that it was his intention to obtain a search warrant. (R.R.32a). Sandt then walked off the

property and towards a parking lot where the landlord, Mr. Cooper, was standing. (R.R.32a).

On March 13, 2001, Sandt procured a search warrant from the magistrate and peacefully conducted the inspection at 246 East Maple Street along with another inspector and two uniformed police officers. (R.R.78a). After both inspections, Sandt completed a form detailing the repairs that were to be made to the property and submitted the form to the landlord. (R.R.53a).

Petitioners filed this civil action for damages under 42 U.S.C. §1983, based on an alleged unlawful search. The District Court on 3/5/02 entered summary judgment for the defendants, concluding that they properly conducted an administrative search of plaintiffs' home. The Third Circuit Court of Appeals affirmed the judgment of the District Court by opinion and order dated November 4, 2002. (See Appendix 1-16 attached to Petition for Writ of Certiorari).

REASONS RELIED UPON FOR DENIAL OF WRIT

Petitioners' Petition for Writ of Certiorari factually and legally mis-characterized the issues in this case. The Christmans were approached by the City of Allentown and were requested to allow access to the home for an inspection pursuant to the administration of the City of Allentown's Property Rehabilitation Code, specifically Article 1759, which sets forth licensing requirements for all residential rental units. (R.R.17a). Initially, the Petitioners aver that the City of Allentown Ordinance contravenes the rationale offered by *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523, 87 S.Ct. 1727,

18 L.Ed.2d 930 (1967). The main thrust of the Petitioners' argument is that there is a penalty provision in the Ordinance.

In relying upon the *Camara v. Municipal Court of the City and County of San Francisco, supra.*, Petitioners overlook the fact that when the City attempted to inspect the property, the Section of the Ordinance authorized employees of city departments or city agencies, so far as may be necessary for the performance of their duties, to have the right to enter a property at reasonable times. The appellant in *Camara, supra.*, refused the inspectors access to his apartment without a search warrant. Thereafter, a complaint was filed charging Camara with refusing to permit a lawful inspection in violation of Section 507 of the Code. The appellant was arrested and released on bail. The case was brought, initially, in a California Superior Court alleging that Camara was awaiting trial on the criminal charge of violating the San Francisco Housing Code by refusing to permit a warrantless inspection of his residence. The Court of Appeals, in relying on *Frank v. State of Maryland*, 359 U.S. 360, 79 S.Ct. 804, 3 L.Ed.2d 877 (1959), *Eaton v. Price*, 364 U.S. 263, 80 S.Ct. 1463, 4 L.Ed.2d 1708 (1960), and decisions in other states, held that Section 503 does not violate the Fourth Amendment Rights, because it "is part of a regulatory scheme which is essentially civil rather than criminal in nature, inasmuch as the section creates a right of inspection which is limited in scope and may not be exercised under unreasonable conditions". 387 U.S. 528, 87 S.Ct. 1730.

In *Frank v. State of Maryland, supra.*, the Supreme Court upheld the conviction of one who refused to permit a warrantless inspection of private premises for the purposes of locating and abating a suspected public nuisance.

In the majority opinion of *Frank*, *supra.*, the Court held that municipal fire, health, and housing inspection programs "touched at most upon the periphery of the important interests safeguarded by the Fourteen Amendment's protection against official intrusion," 359 U.S. at 367, 79 S.Ct. at 809, because the inspections are merely to determine whether physical conditions exist which do not comply with minimum standards prescribed in local regulatory ordinances. Since the inspector does not ask that the property owner open his door to a search for "evidence of criminal action" which may be used to secure the owner's criminal conviction, the historic interest of "self-protection" jointly protected by the Fourth and Fifth Amendments are said not to be involved, but only the less intense "right to be secure from intrusions into personal privacy." *Id.*, at 365, 79 S.Ct. at 808. The Court in *Camara* went on to indicate that, like most regulatory laws, fire, health, and housing codes are enforced by criminal process. 387 U.S. 523, 531, 87 S.Ct. 1727, 1732. The Court also indicated that oftentimes when cities discover violations, that then produces an administrative compliance order, but refusal to comply is still a criminal offense and the facts of compliance are verified by a second inspection, sometimes again without a warrant. As concluded in the *Camara* case, a refusal to permit an inspection is itself a crime, punishable by fine or even by a jail sentence. *Id.* Therefore it is clear that the City of Allentown Ordinance is not the first Ordinance to contain provisions which do penalize individuals for violations of the ordinance.

In *Camara*, *supra.*, the U.S. Supreme Court went on to hold that warrants should issue, but not only when the inspector possessed probable cause to believe that a particular dwelling contains violations of the minimum

standards prescribed by the Code being enforced. The U.S. Supreme Court held 'unlike the search pursuant to the criminal investigation, the inspection programs at issue here are aimed at securing city-wide compliance with minimum physical standards for private property. The primary governmental interest at stake is to prevent even the unintentional development of conditions, which are hazardous to public health and safety. Because fires and epidemics may ravage large urban areas, because unsightly conditions adversely affect the economic values of neighboring structures, numerous courts have upheld the police power of municipalities to impose and enforce such minimum standards even upon existing structures. In determining whether a particular inspection is reasonable – and thus in determining whether there is probable cause to issue a warrant for that inspection – the need for inspection must be weighed in terms of these reasonable goals of code enforcement. 387 U.S. 535, 87 S.Ct. 1734.

The Supreme Court further recognized that the only effective way to seek universal compliance with the minimum standards required by Municipal Codes is through routine periodic inspections of all structures. It is in this issue that the probable cause debate focuses, for the agency's decision to conduct an area inspection is based on its appraisal of conditions in the area as a whole, not on its knowledge of conditions in each particular building. The Supreme Court went on to hold that there were a number of persuasive factors combining to support the reasonableness of area code-enforcement inspections. "First such programs have a long history of judicial and public acceptance. See *Frank v. State of Maryland*, 359 U.S. at 367-371, 79 S.Ct. at 809-811. Second, the public interest

demands that all dangerous conditions be prevented or abated, yet it is doubtful that any other canvassing technique would achieve acceptable results . . . finally, because the inspections are neither personal in nature nor are aimed at the discovery of evidence of crime, they involve a relatively limited invasion of the urban citizen's privacy." 387 U.S. 523, 538, 87 S.Ct. 1727, 1735.

The Supreme Court concluded by stating: "having concluded that the area inspection is a 'reasonable' search of private property within the meaning of the Fourth Amendment, it is obvious 'probable cause' to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e.g., a multifamily apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling." 387 U.S. 538, 87 S.Ct. 1727, at 1735-1736.

The Supreme Court further stated: "[T]he warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant . . . such an approach neither endangers time-honored doctrines applicable to criminal investigations nor makes a nullity of the probable cause requirement in this area. It merely gives full recognition to the competing public and private interests here at stake and, in so doing, best fulfills the

historic purpose behind the constitutional right to be free from unreasonable government invasions of privacy. See *Eaton v. Price*, 364 U.S. at 273-274, 80 S.Ct. at 1468-1469 (opinion of Mr. Justice Brennan). The Supreme Court finally stated: "Similarly, the requirement of a warrant procedure does not suggest any change in what seems to be the prevailing local policy, in most situations, of authorizing entry, but not entry by force, to inspect." 387 U.S. 523, 540, 87 S.Ct. 1727, 1736.

In the Petitioners' Brief they continuously argue that the City of Allentown has "criminalized" the inspection process. Clearly in reviewing the cases cited by the Supreme Court in *Camara*, including the factual circumstances of the *Camara* case itself, there were penalties associated with someone refusing the inspections. The Supreme Court, however, did not believe that that process or that sanction was sufficient to "criminalize" the inspection process. The inspection process in the City of Allentown is not designed or intended to discover evidence of a crime. It is designed to inspect housing and insure the safety of the tenants, and the neighbors.

The Supreme Court in *Camara v. Municipal Court*, 387 U.S. 523 (1967), sought to resolve the tension between the rigid text of the Fourth Amendment and the difficulties in preventing the deterioration of urban housing. The Court noted intensive efforts at all levels of government to contain and eliminate urban blight through periodic mandatory inspections of private property. The Court recognized that if these inspections could only take place upon the belief that a violation of a housing code had already occurred or was imminent, then the purpose of the inspection – avoiding the violations – would be thwarted. The Court further acknowledged the only effective way to

seek universal compliance with the minimal standards required by municipal codes was by routine periodic inspections of all structures. *Smith v. The Borough of Glenolden of Delaware County, Pennsylvania*, 1994 WL 672618 (E.D. Pa.).

Consequently, after *Camara*, *supra.*, a state must obtain a warrant to inspect private property if the occupant does not consent to the search; however, the definition of "probable cause" to obtain such a warrant was relaxed. The Court held that probable cause to issue a warrant to inspect exists if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Thus, in housing inspections and other administrative searches, probable cause is met by finding a reasonable relationship between the "legislative or administrative standards and the dwelling to be searched." *Smith v. The Borough of Glenolden of Delaware County, Pennsylvania*, 1994 WL 672618 (E.D. Pa.).

In arriving at a definition of probable cause, the court balanced the need to search against the invasion which the search entails. *Smith v. The Borough of Glenolden of Delaware County, Pennsylvania*, 1994 WL 672618 (E.D. Pa.). The Supreme Court identified three reasons that justified diminished protection for housing inspections: (1) a long history of judicial and legislative acceptance of housing inspection programs; (2) an interest in preventing and abating dangerous conditions that may not be apparent without a close inspection of the residence; and (3) the impersonal nature of the investigation. *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967).

Article 1759 of the Codified Ordinance of the City of Allentown, which addresses the licensing of residential rental units, was passed by certified voter initiative on May 18, 1999. The purpose of the ordinance, in addition to protecting and promoting the public health, safety and welfare of citizens, was to establish the rights and obligations of owners and occupants relating to residential rental units in Allentown and to encourage owners and occupants to maintain and improve the quality of residential housing within the community. The ordinance provides for a systematic inspection program, registration and licensing of residential rental units and penalties. The inspections are to occur once within a five-year period and a minimum of 60 days notice is given to all initial inspections.

The District Court and Third Circuit Court of Appeals correctly found that the City of Allentown's reasons for the need of a residential inspection program were consistent with the purpose of such inspections as enunciated by the Supreme Court in *Camara*, *supra*. Contrary to the argument set in plaintiff-appellant's brief, the city ordinance is neither personal in nature, directed towards the tenant nor aimed at the discovery of evidence of a crime. The purpose of the inspection is to put the landlord on notice to remedy whatever defects are found on the premises. Under no circumstances is the inspection directed towards the tenant or to uncover any evidence that a crime may have been committed by the tenant. It is simply a periodic inspection to reduce and eliminate urban blight. There is no language in the ordinance that would allow a penalty to be assessed against a tenant or subsequent imprisonment as a result of a continuing violation.

Petitioners continue to argue the search warrant was issued without probable cause, apparently failing to comprehend that the legal definition of probable cause in the context of a housing inspection is very different than probable cause in a criminal case. The Supreme Court in *Camara* established that probable cause to conduct a housing inspection would depend upon "reasonable legislative or administrative standards" that underly the inspection. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e.g., a multi-family apartment house), or the condition of the entire area; they will not necessarily depend upon specific knowledge of the condition of a particular dwelling. *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967).

Thus, the City of Allentown need not have specific knowledge concerning the particular condition of appellants' apartment. As long as the City of Allentown's ordinance is reasonable, then the search warrant is valid if the scope of the search relates to the administrative scheme that the ordinance established. Specifically, *Camara* does not require that an inspector have specific knowledge of a potential violation of particular property. *Smith v. Borough of Glenolden*, 1994 WL 672618 (E.D. Pa. 1994). Indeed, a code enforcement officer could lawfully obtain a warrant even if he knew the property was not in violation of the ordinance.

As the Supreme Court has previously ruled, these area searches are valid. Furthermore, the area search is all that needs to be revealed in the warrant for the granting of a search warrant and, clearly, that is what occurred

in this situation. The warrant contained sufficient information indicating that the individual needed to conduct his inspection of the premises pursuant to the area search and the ordinance at issue.

The Ordinance at issue sets forth that units would be inspected not any more frequently than once within a five-year period unless a complaint or violation had occurred or a public officer had probable cause to believe that a violation was occurring pursuant to Section 1741.08 of the Ordinance. The Ordinance provides for initial inspections to occur in accordance with a phase-systematic inspection program to be prepared and made available by the Department of Community Development. There was a requirement of a 60-day notice for all initial inspections. There is no question that said notice was provided in this case to the owners. Thereafter, an inspection was arranged with the landlord.

The tenant, Mr. Christman, however, refused to allow the building inspector to enter the property to conduct the inspection. The inspector then went to the magistrate's office and obtained a search warrant, a copy of which is made a part of this record. It was clear from the record that this was part of a systematic inspection. Mr. Sandt testified that his job for the year 2000 was to conduct the residential inspections within the 16th Ward of the City of Allentown. This particular property was within the 16th Ward. Mr. Sandt further testified that this, ultimately, turned out to be the last property to be inspected in the 16th Ward because of the difficulty in arranging the appointment with the landlord and then the difficulty in obtaining access to the apartment due to Mr. Christman's not allowing the access.

Respondents believe that this case falls within the ambit of the previously decided cases and is not appropriate for the granting of Certiorari as this issue is already well settled.

It is clear from the record that the City of Allentown was acting pursuant to a "neutral area plan" which was appropriate under the Ordinance and the case law that has been handed down by the courts. The District and Circuit Courts were both correct in determining that this administrative search may be conducted based upon the reduced showing as set forth in the *Camara*, *supra.*, decision.

The City was conducting inspections of the 16th Ward. The Ordinance provided for notice. The notice was given. The tenants refused to let the inspector into the apartment. The inspector obtained a warrant pursuant to the Ordinance's intentions and the safeguards of *Camara*, *supra.* The alleged "penalty" provision in this Ordinance was no different from that in *Camara*, *supra.*

The City had a legitimate intent in conducting their inspections, which has been long recognized by the Courts. This issue has been litigated and approved. There is no need for this Honorable Court to consider the issue again.

CONCLUSION

For all the foregoing reasons, the Respondents, Robert Sandt and the City of Allentown respectfully request this Honorable Court to deny the Petition for Writ of Certiorari and to dismiss this appeal.

Respectfully submitted,

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